

## Securities and Exchange Commission

## § 260.3(4)-2

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§229.303 of this chapter) or Item 5 of Form 20-F (§249.220f of this chapter), "Operating and Financial Review and Prospects", or Item 302 of Regulation S-K (§229.302 of this chapter), supplementary financial information, or Rule 3-20(c) of Regulation S-X (§210.3-20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§229.303 of this chapter) or Item 5 of Form 20-F; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Trust Indenture Act of 1939 and other acts referred to in section

323(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 19458, Mar. 31, 1981, as amended at 47 FR 54790, Dec. 26, 1982; 56 FR 30077, July 1, 1991; 64 FR 53925, Oct. 5, 1999]

### RULES UNDER SECTION 303

#### § 260.3(4)-1 Definition of "commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions" in section 303(4), for certain transactions.

(a) The term *commission* in section 303(4) shall include such remuneration, commonly known as a spread, as may be received by a distributor or dealer as a consequence of reselling securities bought from an underwriter or dealer at a price below the offering price of such securities, where such resales afford the distributor or dealer a margin of profit not in excess of what is usual and customary in such transactions.

(b) The term *commission from an underwriter or dealer* in section 303(4) shall include commissions paid by an underwriter or dealer affiliated with the issuer.

(c) The term *usual and customary distributors' or sellers' commission* in section 303(4) shall mean a commission or remuneration, commonly known as a spread, paid to or received by any person selling securities either for his own account or for the account of others, which is not in excess of the amount usual and customary in the distribution and sale of issues of similar type and size, and not in excess of the amount allowed to other persons, if any, for comparable service in the distribution of the particular issue; but such term shall not include amounts paid to any person whose function is the management of the distribution of all of a substantial part of the particular issue, or who performs the functions normally performed by an underwriter or underwriting syndicate.

#### § 260.3(4)-2 Definition of "distribution" in section 303(4) for certain transactions.

A person, the chief part of the business of which consists in the purchase of the securities of any one issuer and/or its affiliate and in the sale of its own securities to furnish the proceeds